IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2007

C O R A M

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Civil Miscellaneous Appeal No.3656 of 2006
and M.P.No.1 of 2006

The Managing Director
Tamil Nadu State Transport
Corporation Division II Limited
Chennaimalai Road
Erode. .. Appellant/2nd Respondent

Vs

1. Minor Kishore Vignesh,
rep. by his father Mani

2. Balakrishnan
(given up) .. Respondents/Petitioner 1st Respondent

Civil Miscellaneous Appeal against the judgment and decree made in M.C.O.P. No.130 of 2004 dated 08.11.2005 on the file of Motor Accidents Claims Tribunal (II Additional Sub Court), Erode and praying to set aside the same.

For appellant .. Mr. A. Babu

J U D G M E N T

The above appeal is directed against the judgment and decree dated 08.11.2005 made in M.C.O.P.No.130 of 2004 on the file of Motor Accidents Claims Tribunal (II Additional Sub Court), Erode.

2. The claimant/first respondent made a claim petition in M.C.O.P.No.130 of 2004 before the Motor Accidents Claims Tribunal (II Additional Sub Court), Erode, claiming a compensation of a sum of Rs.1,50,000/- with interest with reference to an accident said to have been occurred on 01.01.2002 at 3.15 p.m. on Nathakadayur to Erode Main Road, due to the rash and negligent driving of the driver of the vehicle bearing Registration No. TN-33-N-0608 belonging to the appellant Corporation, as a result of which the first respondent/claimant, who was aged about 10 years and studying V standard, sustained injuries.

3. The tribunal, after careful consideration of the oral and documentary evidence, awarded the following amounts towards

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compensation. Rs.25,000/- towards disability and pain and suffering, Rs.3,000/- towards medical expenses, Rs.1,000/- towards transport charges, extra nourishment expenses and damages to the clothing articles and Rs.25,000/- towards loss of earning capacity, totaling to a sum of Rs.54,000/- as compensation payable by the appellant.

4. The only point argued by the learned counsel for the appellant Corporation is that the award of Rs.25,000/- towards permanent disability and Rs.25,000/- towards loss of earning power are arbitrary and excessive as no sufficient medical bills produced to show that the claimant suffered permanent disability fixed at 12%.

5. The term 'permanent disability' refers to the residuary incapacity or the loss of use of some part of the body found existing at the end of the period of treatment/recuperation, which would remain forever without marked change in future.

6. On a perusal of the award, I find that the claimant, who was studying V Standard sustained a bone fracture below his right knee and abrasions all over the body. It cannot be denied that due to permanent disability suffered by the claimant, his studies is affected and he is unable to walk fast or take part in sports. Hence, taking into consideration the age of the claimant and the injuries sustained by him, I see no ground to interfere with the amount of compensation awarded by the tribunal under the heads of permanent disability and loss of earning capacity, particularly when there is no cross examination of P.W.3 (Doctor) by the appellant .

7. Since no other ground is urged by the learned counsel for the appellant Corporation with regard to the factum of the accident or with regard to the contribution of the driver of the vehicle to the accident, I do not see any reason to interfere with the quantum of compensation fixed by the tribunal. The award dated 08.11.2005 made in M.C.O.P.No.130 of 2004 is, therefore, confirmed. The appeal is dismissed. Consequently, connected C.M.P. is also dismissed.

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To

The Motor Accidents Claims Tribunal
(II Additional Sub Court), Erode.

+ 1 cc to Mr. A. Babu, Advocate SR No. 667

C.M.A.No.3656 of 2006

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